IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5776 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GIRISH H TRIVEDI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 5776 of 2004

MR PM THAKKAR for MR NM KAPADIA for Petitioner

MR RM CHAUHAN, APP for Respondent No.1 - STATE

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 10/12/2004

ORAL JUDGEMENT

1. Rule. Learned APP Mr.R.M.Chauhan, waives service of rule, for respondent No.1 - STATE. Rule was heard forthwith upon the request of learned advocates for the parties.

2. Learned senior counsel Mr.P.M.Thakkar with learned advocate Mr.N.M.Kapadia, for petitioner and learned APP Mr.R.M.Chauhan, for respondent No.1 State were heard at length.

3. This petition is filed under Section 482 of Code

of Criminal Procedure to quash Criminal Case No.4277 of 2004, pending before the learned 3rd Joint Judicial Magistrate (F.C.), Ahmedabad (Rural), which came to be filed by the Police in pursuance of F.I.R. bearing Prohibition C.R.No.5022/2004 on 13th March, 2004 at Satellite Police Station, Ahmedabad. In the said F.I.R., the petitioner is one of the accused and in the charge-sheet, the petitioner is shown to be absconded accused. This petition is preferred by the present petitioner for quashing of the said criminal proceedings qua him only.

4. The Police Commissioner, Zone-1 called complainant Shri K.T.Kamaria, Police Sub-Inspector, Zone-1, Navrangpura, Ahmedabad City and informed that the present petitioner is transporting foreign liquor in Ahmedabad through other persons and on receiving the information, said complainant Shri K.T.Kamaria, Police Sub-Inspector along with two panchas and police personnel, stayed on watch near Bodakdev in the Street of Gurugovinddham, near Building No.399 from 5.30 p.m. They noticed a Qualis Car bearing Registration No. GJ-1-HD-9347 and, thereafter immediately, one Wagon-R Car bearing Registration No. GJ-1-HF-9359 and Maruti Fronti Car bearing Registration No. GJ-1-HF7366 also came there and parked there. Out of Wagon-R Car three persons and from Maruti Fronti Car one person got down and started shifting carton of liquor from Qualis Car to other both Cars. Watching this, complainant and police party alongwith the panchas surrounded them. The person who was in Qualis Car identified himself to be Jagdishsing Uksing Sisodia, resident of Rajasthan and the other person identified himself to be Bheraram Durgaram Chaudhari, resident of Rajasthan. Both are the accused in the said Criminal Case. From Qualis Car, some foreign liquor was found as mentioned in the F.I.R. The persons who came down from Wagon-R Car out of them a person identified himself to be Maulik alias Pappu Jagdishbhai Patel, resident of Ahmedabad. He was having an amount of Rs.3,00,000-00 in cash in notes of different denomination, which were seized by the Police. The other person identified himself to be Bansilal Annaram Bisnoi, resident of Rajasthan. The third person identified himself to be Bhagwanaram Sonaji Bisnoi and all the three are the accused in the said case. The bulk of foreign liquor was seized from Wagon-R Car as detailed in F.I.R. The accused Maulik alias Pappu Jagdishbhai Patel on inquiry made by Police stated that this bulk of foreign liquor was owned by the present petitioner and other bulk was still to follow. Therefore, the complainant and his party again stayed put in watch. During the watch one

Scorpio Car being GJ-1-HF-9657 came and behind that Car one Indica Car being GJ-1-HA-6753 also came there. Those cars were accosted by the police and immediately, third Car, which was Santro Car being GJ-1-HG-7295 also came on the spot. In the said Santro Car one person was sitting in driving seat and one person was sitting in a passenger seat, P.S.I. Shri Nagori identified them and said Santro Car was driven by one Rajesh alias Raju and person who was sitting in a passenger seat was the petitioner. The complainant tried to stop the vehicle, but the vehicle ran away. Since it was necessary to keep watch on the vehicles, which were already seized by the police, the complainant and the party came back where this vehicle were parked. From Scorpio Car, two persons were found and identified themselves to be Bharatsinh Solanki and Ramlal Nathanbhai, who are accused in the case. The bulk of foreign liquor was also found from the said Scorpio Car as detailed in F.I.R. In all, the complaint was filed against eleven accused. The police prepared panchnama in this respect in presence of panchas, Dilipsinh Bharubha Rathod and Dilipsinh Dajibha Chudasama. After the investigation, the charge-sheet came to be filed against nine accused wherein the present petitioner along with other was shown to be accused absconded in Column No.2 and hence, this petition for quashing.

5. Learned Senior counsel Mr.P.M.Thakkar, for petitioner, after going through all the papers of the charge-sheet, submitted that there is no evidence at all against the present petitioner involving him in the said offence under the provisions of Sections 66(1)(B) , 65-A & E, 81, 112 and 116 of the Prohibition Act. Even the complaint and the charge-sheet papers taken on there face value, the fact emerges is while police party was conducting search, the present petitioner passed through in Santro Car, which was accosted by the police and the petitioner was identified and ran away in the said Car. About the ownership of the bulk of foreign liquor, there are statements of the co-accused before the police and except that, there is no other evidence to connect the petitioner with the abovesaid crime. So this criminal proceedings are required to be quashed, as F.I.R. or charge-sheet papers do not disclose even prima facie any involvement of the present petitioner in the said crime.

6. On the other hand, learned APP for respondent State has drawn the attention of this Court towards charge-sheet papers, panchnama and statements recorded by the Investigating Officer. My attention is drawn to panchnama where it is stated that the present petitioner

approached in Santro Car as stated by the other accused and on seeing the police, he ran away on the spot and, therefore, he is shown as being owner of the bulk of foreign liquor seized by the police.

7. Considering the matter in exercise of powers conferred by Section 482 of Code of Criminal Procedure, it is to be seen, whether the facts disclosed by the charge-sheet constitutes any prima facie offence against the petitioner. In this exercise, the Court is not permitted to add or substract anything and shall take the papers or materials on there face value. On going through the papers minutely along with learned advocates, for the parties, the fact emerges that so far as the ownership of the bulk of foreign liquor is concerned, there are statements of the co-accused before the police that the said bulk of foreign liquor was transported by the present petitioner. Now if this fact is considered with Section 3 of the Indian Evidence Act, the said evidence would not be admissible in a trial. Meaning thereby that if, this fact is taken on its face value, it does not disclose any involvement of the petitioner in the crime and the ingredient of any of the offences levelled against him under the Bombay Prohibition Act. It is well settled that the statements made by the co-accused before police cannot be used against the accused. So far as this aspect is concerned, it is clear that there is no material against the present petitioner with the prosecuting agency to prosecute the petitioner. Further if the fact is taken on its face value about the petitioner reaching at the spot in Santro Car near the place of raid by police then too this would not culminate into a material to prosecute the petitioner for charges levelled against him. Mere fact that the police tried to stop the car and the petitioner ran away would not be incriminating as to prosecute the petitioner for Sections 66(1)(B), 65 A & E, 81, 112 and 116 of the Bombay Prohibition Act. Therefore, after carefully considering the charge-sheet papers, prima facie, without embarking upon any inquiry as to truth or falsity for the same, it is clearly borne out that no material is brought out to prosecute the petitioner in the said crime. In this view of the matter, this application is required to be allowed.

8. In the result, this application is allowed. Criminal Case No.4277 of 2004 pending before the learned Third Joint Judicial Magistrate (F.C.), Ahmedabad (Rural) filed in pursuant of F.I.R. bearing Prohibition C.R.No.5022 of 2004 registered at Satellite Police Station is quashed qua present petitioner only. Rule is

made absolute. Direct service is permitted.

[J. R. Vora,J.]

(vijay)